

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DEBRA ANN TARKINGTON,)	
)	
Plaintiff,)	
)	
v.)	No. 4:15CV1600 JMB
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of Social Security,)	
)	
Defendant.)	

BRIEF IN SUPPORT OF THE ANSWER

Summary of Defendant's Brief

Plaintiff alleged disability based on various physical impairments at age 34. Contrary to Plaintiff's allegations, the Administrative Law Judge (ALJ) appropriately assessed Plaintiff's residual functional capacity (RFC). The RFC that the ALJ imposed was consistent—if not slightly more restrictive—than the only medical opinion of record. Additionally, the ALJ gave serious consideration to Plaintiff's allegations of extreme limitations, but appropriately determined that these allegations were not entirely consistent with the record. For example, Plaintiff alleged that her pain was consistently a 7 to 10 on a 10-point scale, and often so extreme, she could not get out of bed. Yet, during her alleged period of disability, Plaintiff was able to work full-time, and only stopped because her employer went out of business. Plaintiff's activities of daily living and the objective medical evidence were also out of proportion with her relatively extreme subjective complaints. Nonetheless, the ALJ imposed significant limitations in Plaintiff's RFC—limiting her ability to stand, walk, and lift, imposing postural limitations, environmental limitations, and mental limitations. Based on testimony of a vocational expert, the ALJ ultimately determined Plaintiff was able to work.

Nature of Action and Prior Proceedings

Plaintiff applied for disability insurance benefits and supplemental security income (SSI) under Titles II and XVI of the Social Security Act (Act), 42 U.S.C. §§ 401-434, 1381-1385 (Tr. 159-66, 167-72). Sections 205(g) and 1631(c)(3) of the Act, 42 U.S.C. §§ 405(g) and 1383(c)(3), provide for judicial review of a “final decision” of the Commissioner of the Social Security Administration (SSA). Plaintiff’s claims were denied initially (Tr. 103-09).¹ On August 27, 2014, following a hearing, an ALJ found that Plaintiff was not under a “disability” as defined in the Act (Tr. 6-23).

After careful consideration of the entire record, the ALJ found that Plaintiff had severe impairments that included autoimmune hepatitis, autoimmune deficiency disorder, and spondylolysis (Tr. 12). However, the ALJ found that she did not have an impairment or combination of impairments listed in or medically equal to one contained in 20 C.F.R. part 404, subpart P, appendix 1 (Tr. 13). The ALJ determined that Plaintiff retained the RFC to perform light work except that she could lift and carry twenty pounds occasionally and 10 pounds frequently; stand and walk for three hours and sit for six; occasionally climb ramps and stairs, balance, stoop, kneel, crouch, or crawl, but could never climb ladders, ropes, or scaffolds (Tr. 13). She should avoid concentrated exposure to temperature extremes, unprotected heights, fast moving machinery, and vibration, and was limited to unskilled work consisting of one-to-two step instructions (Tr. 13). The ALJ found that Plaintiff’s impairments would not preclude her from performing work that exists in significant numbers in the national economy, including work

¹ Missouri is one of several test states participating in modifications to the disability determination procedures, which eliminate the reconsideration step in the administrative appeals process. See 20 C.F.R. §§ 404.906, 404.966, 416.1406, 416.1466. Plaintiff’s appeal in this case proceeded directly from the initial denial to the ALJ level.

as a patcher, touch up screener, or charge account clerk (Tr. 18-19). Consequently, the ALJ found that Plaintiff was not disabled (Tr. 19).

On September 18, 2015, SSA's Appeals Council denied Plaintiff's request for review (Tr. 1-3). Thus, Plaintiff has exhausted her administrative remedies, and the ALJ's decision stands as the final decision of the Commissioner subject to judicial review.

Statement of Facts

Plaintiff applied for disability beginning on December 24, 2011, at the age of 34 (Tr. 160, 167). According to her disability report, Plaintiff claimed she was unable to work due to autoimmune hepatitis, lupus, and fibromyalgia (Tr. 210). Defendant adopts the facts as set forth by the ALJ regarding Plaintiff's medical treatment and vocational history (Tr. 9-19). A more specific analysis of the facts is incorporated into the Argument below.

Statement of the Issues

The general issues in a Social Security case are whether the final decision of the Commissioner is consistent with the Social Security Act, regulations, and applicable case law, and whether the findings of fact are supported by substantial evidence on the record as a whole. The specific issues in this case are whether the ALJ appropriately assessed Plaintiff's "severe" impairments at step two of the sequential evaluation process; properly determined Plaintiff's impairments did not meet or equal the severity of a listing at step three of the sequential evaluation process; appropriately assessed the consistency of Plaintiff's complaints with the record as a whole; correctly assessed the medical opinion evidence of record; appropriately determined Plaintiff's RFC; and whether the vocational expert's testimony constitutes substantial evidence on which the ALJ's determination is based.

Standard of Review

The standard of appellate review of the Commissioner's decision is limited to a determination of whether the decision is supported by substantial evidence on the record as a whole. See Milam v. Colvin, 794 F.3d 978, 983 (8th Cir. 2015). Substantial evidence is less than a preponderance, but enough that a reasonable mind might accept as adequate to support the Commissioner's conclusion. See id.

The Court must consider evidence that both supports and detracts from the Commissioner's decision but cannot reverse the decision because substantial evidence also exists in the record that would have supported a contrary outcome, or because it would have decided the case differently. See Andrews v. Colvin, 791 F.3d 923, 928 (8th Cir. 2015). If the Court finds that the evidence supports two inconsistent positions and one of those positions represents the Commissioner's findings, the Court must affirm the Commissioner's decision. Wright v. Colvin, 789 F.3d 847, 852 (8th Cir. 2015). The Eighth Circuit has stated that "[w]e defer heavily to the findings and conclusions of the Social Security Administration." Id. (quoting Hurd v. Astrue, 621 F.3d 734, 738 (8th Cir. 2010)).

Argument

To establish entitlement to benefits, Plaintiff must show that she is unable to engage in any substantial gainful activity by reason of a medically determinable impairment that has lasted or can be expected to last for a continuous period of not less than 12 months. See 42 U.S.C. § 423(d). The Supreme Court in Barnhart v. Walton, 535 U.S. 212 (2002), upheld the Commissioner's interpretation of this statutory definition, which requires that the disability, and not only the impairment, must have existed or be expected to exist for 12 months. Plaintiff has not met this burden.

A. The ALJ Assessed Plaintiff's Impairments at Step Two of the Sequential Evaluation Process and Considered these impairments in Combination

Plaintiff appears to argue that the ALJ erred by failing to assess all of her impairments as “severe” at step two of the sequential evaluation process. See Pl.’s Br. at 23-28. Specifically, Plaintiff argues that the ALJ did not evaluate her systemic lupus erythematosus as “severe.” See 23. At the second step of the sequential evaluation, the ALJ must determine whether the claimant has a “severe” combination of impairments that lasted or are expected to last for at least twelve months. See 20 C.F.R. §§ 404.1520(a)(4)(ii) and 416.920(a)(4)(ii) (describing step two) and 404.1509 and 416.909 (describing durational requirements). In order to be “severe,” an impairment must also be “medically determinable.” See 20 C.F.R. §§ 404.1505(a), 404.1521, 416.905(a), 416.921; SSR 96-3p. To be medically determinable, an impairment must “be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by [the claimant’s] statement of symptoms.” 20 C.F.R. §§ 404.1508 and 416.908. A medically determinable impairment is “severe” if it more than minimally affects the claimant’s ability to perform work-related activities. See Nguyen v. Chater, 75 F.3d 429, 431 (8th Cir. 1996); 20 C.F.R. §§ 404.1521 and 416.921; SSR 96-3p.

Here, the ALJ considered Plaintiff’s systemic lupus erythematosus, but referred to it in more general terms, as “autoimmune deficiency disorder” (Tr. 12). Notably, the ALJ found that Plaintiff’s autoimmune deficiency disorder (i.e. systemic lupus erythematosus) was “severe” (Tr. 12). Therefore, because the ALJ considered the symptoms of Plaintiff’s systemic lupus erythematosus, but simply referred to the disorder by a different term—the ALJ adequately considered this impairment (Tr. 12-18).

In addition to autoimmune deficiency disorder, the ALJ also found that Plaintiff's autoimmune hepatitis and spondylosis were "severe" (Tr. 12). The ALJ considered these impairments, along with other impairments that were not severe, in assessing Plaintiff's RFC (Tr. 6-19). Therefore, the ALJ appropriately considered Plaintiff's impairments in combination.

B. Substantial Evidence Supports the ALJ's Finding that Plaintiff Failed to Establish that His Impairments Met or Equaled Listing 14.02.

Plaintiff also appears to argue that the ALJ erred by finding that he did not meet or equal Listing 14.02. See Pl.'s Br. at 23-28. However, the ALJ appropriately assessed the listings under 20 C.F.R. Part 404. At step three of the sequential evaluation process, an ALJ must consider whether a claimant's impairments meet or medically equal the severity of an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. See 20 C.F.R. §§ 404.1505, 404.1520(4), 416.905, 416.920(4). To meet a listing, a claimant must show that her impairment matches all the specified medical criteria of the listing. See Carlson v. Astrue, 604 F.3d 589, 593 (8th Cir. 2010) (citing Johnson v. Barnhart, 390 F.3d 1067, 1070 (8th Cir. 2004)). It is Plaintiff's burden to show that her impairment meets all of the specified criteria for a listed impairment. McCoy v. Astrue, 648 F.3d 605, 611 (8th Cir. 2011) ("[The] claimant carries the burden of establishing that his condition meets or equals all of the specified criteria.").

After considering all the evidence, the ALJ found that Plaintiff's autoimmune deficiency disorder was a "severe impairments" (Tr. 12). At step three, the ALJ concluded that Plaintiff's severe impairments did not meet or medically equal the criteria of a listed impairment (Tr. 13).

In order to meet listing 14.02, Plaintiff must show:

A. Involvement of two or more organs/body systems, with:

1. One of the organs/body systems involved to at least a moderate level of severity; and
2. At least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss).

OR

B. Repeated manifestations of SLE, with at least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss) and one of the following at the marked level:

1. Limitation of activities of daily living.
2. Limitation in maintaining social functioning.
3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

See 20 C.F.R. pt. 404, subpt. P, app. 1, § 14.02. After considering all the evidence, the ALJ found that Plaintiff did not have the required elements for Listing 14.02 (Tr. 13). Id. Notably, Kenneth Smith, M.D., whose opinion the ALJ considered and assigned “great weight,” evaluated Plaintiff’s impairments under Listing 14.02 (Tr. 16). Dr. Smith found that Plaintiff’s impairments did not meet or equal the severity of listing 14.02 (Tr. 13, 16, 84). He noted that the objective tests regarding Plaintiff’s lupus were normal with medication (Tr. 14, 16, 87).

The ALJ also found that Plaintiff had no more than “mild” limitations in engaging in activities of daily living, social functioning, or concentration, persistence, and pace (Tr. 12). This assessment falls short of the requirement to meet or equal the Listing under part B. The ALJ’s assessment is also entirely consistent with the opinion of Charles Watson, PsyD. (Tr. 83). Thus, the ALJ reasonably concluded that Plaintiff’s impairments did not meet or equal the severity of Listing 14.02 (Tr. 13).

C. The ALJ Properly Weighed the Consistency of Plaintiff’s Subjective Complaints with the Record as a Whole.

Contrary to Plaintiff’s argument, the ALJ appropriately assessed the consistency of Plaintiff’s testimony with the record.² See Pl.’s Br. at 42-47, 51-58. In this respect, the ALJ made significant findings which must be considered in evaluating his RFC assessment (Tr. 11-

² The ALJ assessed Plaintiff’s credibility pursuant to Social Security Ruling (SSR) 96-7p (Tr. 14). SSR has since been superseded by SSR 16-3p. However, the ALJ’s analysis is appropriate, as SSR 16-3p did not come into effect until March 28, 2016.

18). See 20 C.F.R. §§ 404.1529(c)(4) and 416.929(c)(4). These findings must be affirmed if they are supported by substantial evidence on the record as a whole, *even if* substantial evidence would also support the opposite conclusion. See Wildman v. Astrue, 596 F.3d 959, 964 (8th Cir. 2010). Credibility questions concerning a claimant's subjective testimony are "primarily for the ALJ to decide, not the courts." Vossen v. Astrue, 612 F.3d 1011, 1017 (8th Cir. 2010). Because the ALJ articulated the inconsistencies on which she relied in discrediting Plaintiff's subjective complaints, and because those inconsistencies are supported by good reason and substantial evidence, the credibility finding should be affirmed. See Cline v. Colvin, 771 F.3d 1098, 1102 (8th Cir. 2014) ("We defer to the commissioner's credibility determinations if they 'are supported by good reasons and substantial evidence'").

First of all, the ALJ appropriately considered that Plaintiff's work during the alleged period of disability in considering the consistency of her subjective complaints with the record (Tr. 11, 17). Plaintiff worked full-time after her alleged date of onset until her employer went out of business (Tr. 11-17, 36). The Eighth Circuit has noted that an ALJ can consider even part-time work when assessing ability to perform work. See Goff v. Barnhart, 421 F.3d 785, 792 (8th Cir. 2005) ("[w]orking generally demonstrates an ability to perform a substantial gainful activity"). Harris v. Barnhart, 356 F.3d 926, 930 (8th Cir. 2004) ("[i]t was also not unreasonable for the ALJ to note that Harris's . . . part-time work [was] inconsistent with her claim of disabling pain"). Thus, the ALJ appropriately considered this evidence.

The ALJ also properly considered that Plaintiff accepted unemployment benefits and looked for work, but was unsuccessful (Tr. 11, 17, 38, 74, 169). In accepting these benefits, she held herself out to another government agency as able and willing to work and actively applying for work (Tr. 11, 17, 38, 74, 169). The Eighth Circuit has held that a claimant's actions in

looking for work supported the ALJ's unfavorable disability finding. See House v. Astrue, 500 F.3d 741, 745 (8th Cir. 2007). Moreover, "[a]pplying for unemployment benefits adversely affects credibility, although it is not conclusive, because an unemployment applicant 'must hold himself out as available, willing and able to work.'" Smith v. Colvin, 756 F.3d 621, 625 (8th Cir. 2014) (citing Jernigan v. Sullivan, 948 F.2d 1070, 1074 (8th Cir. 1991)).

The ALJ also considered the objective evidence of record (Tr. 15-16). Although an ALJ may not reject a claimant's subjective complaints solely for lack of objective medical evidence, the ALJ may consider the absence of objective medical evidence supporting the degree of severity alleged. See 20 C.F.R. §§ 404.1529(c)(2) and 416.929(c)(2); Gonzales v. Barnhart, 465 F.3d 890, 895 (8th Cir. 2006) (an ALJ may determine that "subjective pain complaints are not credible in light of objective medical evidence to the contrary" (citation omitted)). For example, Plaintiff alleged that she continued to have back pain every day, even with medication and that her pain ranges from a seven to ten on a ten-point scale (Tr. 14, 48-49). She reported she could not sit in one spot for long periods and that she could walk no more than half a block due to back pain (Tr. 14, 54-55). Plaintiff also reported that her pain is sometimes so intense, she could not leave her bed all day (Tr. 14, 59). However, imaging showed no more than grade I anterolisthesis spondylolysis (Tr. 15, 572). Bone density testing was normal (Tr. 15, 461). Examination in July 2012 showed that Plaintiff had a normal gait, full strength throughout her body, no sensory deficits, and full reflexes (Tr. 15, 309). Emergency room records in April 2012 reveal that despite Plaintiff's complaints of pain, she was able to move all her extremities effectively without and signs of gait abnormality (Tr. 15, 326). Plaintiff also admitted to her rheumatologist that she was able to ambulate normally, complete daily activities, and climb stairs (Tr. 15, 323).

Contrary to Plaintiff's argument, the ALJ also appropriately considered Plaintiff's allegations of pain (Tr. 39). See Polaski, 739 F.2d at 1322 (listing the "duration, frequency and intensity of pain") among the credibility factors to consider). "As is often true in disability cases, the question was not whether [the claimant] was experiencing pain, but rather the severity of [his] pain." Hogan v. Apfel, 239 F.3d 958, 961 (8th Cir. 2001). "While pain may be disabling if it precludes a claimant from engaging in any form of substantial gainful activity, the mere fact that working may cause pain or discomfort does not mandate a finding of disability." See also Johnson v. Chater, 108 F.3d 942, 947 (8th Cir. 1997) (quoting Jones v. Chater, 86 F.3d 823, 826 (8th Cir. 1996)). Here, the ALJ expressly considered Plaintiff's pain in evaluating her RFC (Tr. 15). However, the ALJ also noted that not only were the objective findings relatively unremarkable, but treatment notes indicated that Plaintiff's autoimmune condition appeared to be stable with medication (Tr. 14, 259-61, 336). Notably, "[i]f an impairment can be controlled by treatment or medication, it cannot be considered disabling." Brown v. Astrue, 611 F.3d 941, 955 (8th Cir. 2010) quoting Brace v. Astrue, 578 F.3d 882, 885 (8th Cir. 2009). Therefore, the ALJ's credibility analysis supports her determination of no disability.

The ALJ also found Plaintiff's daily activities to be inconsistent with the degree of disability Plaintiff alleged. Plaintiff claimed that she was often confined to bed for the entire day due to pain, could walk no more than half a block, and could not sit for extended periods of time (Tr. 15, 54-55, 59). Yet she was able to shop at stores, make simple meals, wash laundry, do dishes, attend occasional school events for her son, make her bed, and care for her small dogs (Tr. 16, 44-46, 233-40). This level of activity is disproportionate to the level of limitation Plaintiff described in her subjective complaints (Tr. 16). "[A]cts such as cooking, vacuuming, washing dishes, doing laundry, shopping, driving, and walking, are inconsistent with subjective

complaints of disabling pain.” Medhaug v. Astrue, 578 F.3d 805, 817 (8th Cir. 2009). Thus, the ALJ appropriately considered Plaintiff’s disability.

D. The ALJ Properly Considered the Medical Opinions and Third-Party Statements of Record.

Plaintiff appears to argue that the ALJ failed to assign “controlling weight” to the medical opinions of Plaintiff’s treating physicians. See Pl.’s Br. at 41-42. Significantly, however, Plaintiff does not identify a single medical opinion submitted by a treating physician. See Pl.’s Br. at 41-42. A “medical opinion” is an opinion about the nature and severity of an individual’s impairment(s). See 20 C.F.R. §§ 404.1527(a) and 416.927(a); SSR 9-62p. A treating source’s medical opinion is assigned “controlling weight,” only if it is well- supported by medically acceptable clinical and laboratory diagnostic techniques and “not inconsistent” with the other substantial evidence in the case record. See 20 C.F.R. §§ 404.1527(c)(2) and 416.927(c)(2); SSR 9-62p.

In this matter, the only “medical opinion,” of record discussing Plaintiff’s physical work-related restrictions appears to be from Dr. Smith, the State agency medical consultant (Tr. 16, 84-87). Dr. Smith opined that Plaintiff could lift and carry 20 pounds occasionally and 10 pounds frequently; stand or walk for three hours a day and sit for more than 6; occasionally climb ramps, stairs, ladders, ropes, or scaffolds, balance, stoop, kneel, crouch, or crawl; and must avoid concentrated exposure to extreme temperatures, vibrations, and hazards (Tr. 84-87). As the ALJ noted, Dr. Smith also included a thorough explanation for his findings, which was consistent with the medical record (Tr. 16, 87).

Plaintiff appears to argue that Dr. Smith’s opinion is insufficient evidence on which to base the RFC. See Pl.’s Br. at 41-42, 48-49. However, “State agency medical and psychological

consultants . . . are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation,” and the ALJ “*must* consider findings of State agency medical and psychological consultants . . . as opinion evidence.” 20 C.F.R. § 416.927(f)(2)(I) (emphasis added). Moreover, an ALJ’s RFC assessment can be supported by substantial evidence even where there is no treating opinion of record. In fact, the Eighth Circuit has upheld determinations in which there was no medical opinion specifically addressing the claimant’s work-related limitations. See Steed v. Astrue, 524 F.3d 872, 876 (8th Cir. 2008) (ALJ’s RFC finding based upon diagnostic tests and examination results); Dykes v. Apfel, 223 F.3d 865, 867 (8th Cir. 2000) (the ALJ’s RFC finding was supported by medical evidence because the ALJ relied on the claimant’s treatment records); Harris v. Astrue, No. 12-5031, 2013 WL 1628412, at *3–4 (W.D. Mo. Apr. 16, 2013) (holding that the ALJ’s RFC assessment was supported by substantial evidence even though there was no medical opinion supporting the ALJ’s work-related limitations).

Plaintiff also suggests that the ALJ erred by not assessing greater weight to third-party statement by her daughter, Morgan Tarkington (Tr. 17, 257-58). See Pl.’s Br. at 52. However, as the ALJ explained these statements, like Plaintiff’s own subjective complaints, were not consistent with the preponderance of the objective findings, opinions, and observations (Tr. 17, 257-58). See Black v. Apfel, 143 F.3d 383, 387 (8th Cir. 1998) (“Black’s parents were not qualified to give an opinion regarding her capacity to work, however, and their testimony merely corroborated Black’s testimony regarding her activities. The ALJ, having properly discredited Black’s complaints of pain, was equally empowered to reject the cumulative testimony of her parents.”)

E. Substantial Evidence Supports the ALJ's Determination of Plaintiff's RFC

After thoroughly assessing the record and Plaintiff's testimony, the ALJ determined that Plaintiff retained the RFC to perform light work except that she could lift and carry twenty pounds occasionally and 10 pounds frequently; stand and walk for three hours and sit for six; occasionally climb ramps and stairs, balance, stoop, kneel, crouch, or crawl, but could never climb ladders, ropes, or scaffolds (Tr. 13). She should avoid concentrated exposure to temperature extremes, unprotected heights, fast moving machinery, and vibration, and was limited to unskilled work consisting of one-to-two step instructions (Tr. 13).

Plaintiff argues that the ALJ erred in determining her RFC. See Pl.'s Br. at 38-41, 47-48. Social Security Ruling 96-8p requires that a residual functional capacity "include a narrative discussion describing how the evidence supports each conclusion." SSR 96-8p. The ALJ provided this narrative by summarizing Plaintiff's treatment notes, objective evidence, the opinion evidence, Plaintiff's self-reported activities, and various factors assessing the consistency of the record with Plaintiff's complaints, in determining the Plaintiff's RFC (Tr. 9-19). Because the ALJ's narrative explains each conclusion by reference to evidence in the record, the statement satisfies all requirements imposed by SSR 96-8p. The ALJ's RFC is supported by substantial evidence (Tr. 13).

Plaintiff further suggests that the ALJ erred by failing to impose various exertional and non-exertional restrictions such as frequent absences due to pain, difficulty remembering, no squatting, no standing for periods greater than 5 to 10 minutes, no sitting for significant periods of times, no grasping, no lifting more than 8 pounds, and no jobs requiring concentration. See Pl.'s Br. at 39. Significantly, however, the ALJ is not required to take Plaintiff's subjective complaints and allegations at face value. The ALJ considered Plaintiff's allegations, and

imposed significant RFC limitations (Tr. 9-19). The ALJ also explained her reasoning for the RFC (Tr. 9-19). Specifically, as is discussed more thoroughly above, the ALJ determined that Plaintiff's allegations were generally more restrictive than the objective and opinion evidence suggested. See Smith v. Colvin, 756 F.3d 621, 625 (8th Cir. 2014) ("We defer to the ALJ's evaluation of [a claimant's] credibility, provided that such determination is 'supported by good reasons and substantial evidence, even if every factor is not discussed in depth.'"). The ALJ appropriately determined Plaintiff's RFC.

F. Plaintiff Was Not Disabled Because She Retained the Residual Functional Capacity to Perform Work Existing in Significant Numbers in the National Economy

The ALJ incorporated Plaintiff's credible impairments into an RFC finding (Tr. 13). The ALJ posed a hypothetical question to the vocational expert during the hearing, involving an individual of Plaintiff's age, education, and RFC (Tr. 13, 66-69). The vocational expert responded that the individual could work as a patcher, touch up screener, or charge account clerk (Tr. 19, 69-70). The question was properly formulated so the expert's testimony that Plaintiff could perform work that exists in substantial numbers constitutes substantial evidence supporting the Commissioner's decision (Tr. 18-19, 66-70). See Heino v. Astrue, 578 F.3d 873, 882 (8th Cir. 2009).

Conclusion

Plaintiff had a fair hearing and full administrative consideration in accordance with applicable statutes and regulations. Substantial evidence on the record as a whole supports the Commissioner's decision. Accordingly, the Commissioner's decision should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2016, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following: Lopa Blumenthal, Attorney for Plaintiff, 320 Brookes Drive, Suite 123, Hazelwood, Missouri 63043.

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